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John Todd Dipre

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Applicant: Paul Stiros et al.

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Serial No.: 09/775,999

: Group Art Unit: 1744

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: Examiner: M. Chorbaji

For: **Apparatus and Method for Deodorizing Confined Air Spaces which Utilize Baking Soda**

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicants request review of the rejections set forth in the Official Action mailed February 6, 2007. No amendments are being filed with this Request. This Request is being filed with a Notice of Appeal. Review is requested for the reasons stated below.

Claims 22-28, 30-31, 33-34 and 40-41 were rejected under 35 U.S.C. §102(b) as being anticipated by the Madjar U.S. Patent No. 4,078,891. Claims 35-36 and 38-39 were rejected under 35 U.S.C. §103(a) as being unpatentable over Madjar '891 in view of the Arnold, II U.S. Patent No. 4,995,556 and the Booth, Jr. et al. U.S. Patent No. 4,869,407. Claim 29 was rejected under 35 U.S.C. §103(a) as being unpatentable over Madjar '891 as applied to claim 28 and further in view of Arnold, II '556. Claim 32 was rejected under 35 U.S.C. §103(a) as being unpatentable over Madjar '891 as applied to claim 31 and further in view of the Freestone U.S. Patent No. 1,977,760. Claim 37 was rejected under 35 U.S.C. §103(a) as being unpatentable over Madjar '891 in view of Arnold, II '556 and Booth, Jr et al. '407 as applied to claim 36 and further in view of the Aibe et al. U.S. Patent No. 5,288,306.

These rejections are traversed and reconsideration is respectfully requested.

Applicants submit that the present claims 22-41 define systems, methods and apparatus' which are patentably distinguishable over the teachings of the cited references. Particularly, as the panel is aware, anticipation under 35 U.S.C. §102 requires that each and every element as set forth in the claims is found, either expressly or inherently described, in a single prior art reference, *In re Robertson*, 49 USPQ2d 1949 (Fed. Cir. 1999). Indeed, as the panel is also aware, when evaluating a claim for determining obviousness, all limitations of the claim must be evaluated, *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988). The cited references alone, or in the cited combinations, do not teach each and every claim limitation.

As defined by independent claim 40, the system for deodorizing air according to the invention comprises a passive filter member and a forced air filter member. The passive filter member comprises a first filter element comprising a first filter medium which at least partially comprises sodium bicarbonate, the passive filter member being adapted to remove malodor from air without the assistance of an air moving member. The forced air filter member has an air flow path from an air inlet to an air outlet, and comprises a second filter element and an air moving member, the second filter element comprising a second filter medium which at least partially comprises sodium bicarbonate, the air moving member having a housing and being adapted to move air along the air flow path and through at least a portion of the second filter medium. The second filter element is positioned on an upper exterior portion of the housing and is detachable from the air moving member, and interfacing parts of the second filter element and the upper exterior portion of the housing have complimentary surface topography. The passive filter member is interchangeable with the second filter element for positioning on the exterior portion of the housing. Similarly, the method for deodorizing air in confined space of claim 35 employs a passive filter member and a forced air filter member as defined in claim 40. Moreover, the apparatus for deodorizing air of independent claim 41 presented herein includes a forced air filter

member including a filter element similar to the second filter element of claim 40. Accordingly, the systems, methods and apparatus defined by the claims provide a convenient and versatile means for deodorizing air. Additionally, the systems, methods and apparatus of the invention allow the filter elements to be easily replaced as necessary for extended use.

Thus, each of claims 35 and 40 require, *inter alia*, separate passive and forced air filter members. Additionally, each of claims 35 and 40 requires, *inter alia*, that the passive filter member is interchangeable with the second filter element for positioning on the exterior portion of the housing. Moreover, the second filter element includes a second filter medium which at least partially includes sodium bicarbonate.

In rejecting claims 35 and 40, the Examiner relies upon Madjar '891 as teaching or suggesting the use of a second filter member (referring to col. 3, lines 11-16) that is interchangeable with the passive filter member (elements 44,45 in Fig. 2). To the contrary, Madjar '891 shows an air filter canister 20 and a bottle-like container (47) adapted to hold a liquid media (see col. 4, lines 12-15). The liquid media is for enriching filtered air with disinfectant or perfume (col. 4, lines 47-53). Applicants find no teaching by Madjar '891 to result in the system of claim 40 or the method of claim 35. Particularly, Madjar '891 does not disclose a passive filter member. Further, in Madjar '891, the first and second "filter members" relied on by the Examiner are contained within the same apparatus and are positioned for use in series (see col. 1, lines 56-57). As such, Madjar '891 merely disclose using the two members within the same apparatus. Additionally, in Madjar '891, there is no teaching that the first and second "filter members" can be interchanged. In fact, interchanging the first and second "filter members" relied on by the Examiner would result in a larger, awkward unit that is not self-contained, as the bottle-like containers 44,45 would be exposed and resting on the container's exterior surface (see Fig. 2). Thus, interchanging the two members would be contrary to the apparatus' stated benefit of accommodating all parts within a single housing (see col. 1, lines 56-61). Madjar '891,

therefore, fails to disclose that the separate passive filter member is interchangeable with the second filter element of the forced air filter member for positioning on the exterior surface of the air moving member housing as required by claims 35 and 40.

Moreover, in rejecting claims 35 and 40, the Examiner relies upon Madjar '891 as disclosing a second filter element which is capable of holding various deodorizing mediums, including sodium bicarbonate. To the contrary, while Madjar '891 show an air filter canister (20) with a mesh-like screen (23) (see Fig. 1), Applicants find no teaching by Madjar '891, or any other cited reference, to result in the presently claimed systems and methods which require sodium bicarbonate, not merely a filter member capable of holding sodium bicarbonate. Particularly, in Madjar '891, the air filter canister (20) and mesh-like screen (23) are used to remove particulate matter from the drawn air (see col. 4, lines 44-45), but Applicants find no disclosure of sodium bicarbonate. As such, Madjar '891 fails to disclose that the second filter element includes a second filter medium which at least partially comprises sodium bicarbonate

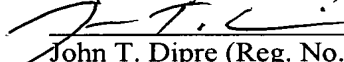
In view of these deficiencies in Madjar '891, Madjar '891 does not anticipate claims 35 or 40, or any of the claims dependent thereon. Further, none of the secondary references resolve these deficiencies and therefore Madjar '891 in combination with the secondary references does not render claims 35 or 40, or any of the claims dependent thereon obvious. Specifically, neither Arnold, II, Booth, Jr., Freestone nor Aibe et al. teach or suggest a separate passive filter member that is interchangeable with the second filter element of the forced air filter member for positioning on the exterior surface of the air moving member housing, as presently claimed. As such, reconsideration is respectfully requested.

In addition, claim 41 requires, *inter alia*, that the forced air filter member comprises a filter element including a filter medium which at least partially includes sodium bicarbonate. In the rejection of claim 41, the Examiner relies upon Madjar '891 as teaching that the second filter

element includes a second filter medium which is capable of holding various deodorizing mediums, including sodium bicarbonate. To the contrary, as noted above, while Madjar '891 show an air filter canister (20) with a mesh-like screen (23) (see Fig. 1), Applicants find no teaching by Madjar '891, of a filter element comprising sodium bicarbonate as required by claim 41. Particularly, in Madjar '891, the air filter canister (20) and mesh-like screen (23) relied on by the Examiner are used to remove particulate matter from the drawn air (see col. 4, lines 44-45), but no disclosure of sodium bicarbonate is found. As such, Madjar '891 fails to disclose that the filter element includes a filter medium which at least partially comprises sodium bicarbonate. Accordingly, claim 41 is not anticipated by and is patentably distinguished from Madjar '891, whereby the rejection of this claim under 35 U.S.C. §102 should be reversed.

In addition, to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the Appellants. *In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984). Appellants find no teaching by any cited reference, alone or in combination, disclosing the use of separate passive and forced air filter members or the desirability of a method comprising a passive filter member that is interchangeable with a second filter element of a forced air filter member, as claimed. As such, the cited references do not provide the requisite suggestion of desirability or motivation, whereby claims 35 and 40, and the claims dependent thereon, are nonobvious over and patentably distinguished from the cited references and the rejection under 35 U.S.C. §103 should be reversed.

Respectfully submitted,



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